

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

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2001 SENATE POLITICAL SUBDIVISIONS

SB 2078

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2078

Senate Political Subdivisions Committee

Conference Committee

Hearing Date January 11, 2001

Tape Number	Side A	Side B	Meter #
1	x		4.5
1		x	26.4-52.6
1-12-01	x		0.0-5.0
1-19-01	x		0.0-24.0
Committee Clerk Signature <i>Mary Jo Wocken</i>			

Minutes: The hearing was opened on SB2078; real estate salesperson and broker errors and omissions insurance.

Dennis Schultz, North Dakota Real Estate Commission introduced SB2078. See attached testimony.

Senator Flakoll: South Dakota has 79 claims. Most claims average around \$1000. Does the state of North Dakota have any numbers put together in terms of complaints or those types of things?

Dennis Schultz: Well as far as consumers file a formal complaint against a licensee, yes we do. North Dakota has 12 formal complaints that either go to a hearing or are investigated by our agency. When the consumer calls with a legitimate complaint and find we can't help them, to collect monetary damages and they have to file a civil suit, in those cases the consumer is not going to pursue as far as the license law matter is concerned. The legal costs in SD for licensees by far exceeds the cost of claims paid out.

you want errors and omission insurance, its generally under the firm policy. They will write a policy for the firm, for the licensees in that firm, but if you are coming into the firm as an individual salesperson, broker or associate, and want to take out your own policy it is very difficult to obtain, under those circumstances, and of course the costs would be quite high. Very high. So thats one of the reasons I think a mandatory thing would enable a licensee for example to be covered by what firm they want to belong to.

Claus Lembke represents the North Dakota Association of Realtors and presented testimony in support of the bill. See attached testimony.

Jerry Engel, Oak Tree Realtors, supported the bill. See attached testimony

Tate Cymbaluk, Basin Brokers in Williston, supported this bill. See attached testimony.

Shirley Moen, Chairman of Political Affairs Committee of the ND Association of Realtors, supported this bill. See attached testimony.

Senator Mather Do you carry comprehensive insurance? Umbrella coverage that covers everyone? Shirley Moen, responded " yes she would not work for a company that didn't offer insurance for its employees". Senator Lee, in response to Shirley Moens' states that her company always has insurance, their company buys it as a group policy. Senator Mathern, " Do the firms that have the umbrella coverage for all of their employees usually pays the premium, or does the employee pay the cost"? Shirley Moen, in our case the insurance is covered by our company.

Claus Lembke responded that each does it differently, they charge back to the individual for the cost of errors and omissions. Senator Mathern, " is their a maximim on each closing"? Claus Lembke continued that it is strictly between the broker and that individual. Senator Polovitz, Does this cost for the firm or realtor reflected then back to the cost to the consumer? Claus Lembke, this could be up to the company. Some companies might pick it up for the agent some

don't, they have other fees, realtor dues, some charge it back and as far as getting it back to the consumer it would be difficult to measure that, because they sit down when they list your home and negotiate the rate. How marketable is it, every company has different policies. I would say it would be flatly difficult to pass it back on to the consumer.

Shirley Moen, North Dakota Association of Realtors, spoke in favor of this bill. See attached testimony.

Moine R. Gates, North Dakota Association of Realtors, spoke in favor of this bill. See attached testimony.

Senator Cook, Mr. Gates, " If I was going to buy a piece of commercial property that had abestos in it and you listed that property and never indicated that it did, and another realtor sold the property to me and at no time was I informed that it had asbestos, which one has done the wrong? Mr. Gates, I don't know who has done the wrong part of it, could be both of us cause there might be the assumption there, that both sides should've known about that. If I as a listing agent haven't done my homework to find out that there is abestos there, I think it is very similar to a house sliding down a cliff. Both sides would be caught up in that aspect of it. Senator Cook, so if both of you had errors and omissions insurance, both would be there. Mr. Gates, I would like to know that if I've got errors and insurance that they would have the other one there too.

Roger Cymbaluk, Real Estate Commission spoke in favor of this bill.

Leon Wallberg spoke against this bill. I am not in favor of mandatory omissions insurance. See attached testimony.

Senator Lee , Mr. Walberg would you go to an attorney or physican who did not have some kind of liability insurance, because after all everything they do is going to be correct or proper and you would not worry about having any recourse? Mr. Wallberg, I guess that would be at my option at

a free enterprise system. That is always my option to decide whether I want to see a faith healer or medical doctor, I guess it is always at my option, if he has liability insurance, I guess would be secondary. Senator Lee, Do you think Mr. Wallberg that the general public visiting with an attorney or physican or a real estate agent is likely to think about whether they have E & O insurance? Mr. Wallberg, I think it is our obligation Senator to make sure or prompt them to ask questions, thats the key to not having any legal problems. Thats why I tell them that I don't have E&O insurance. Senator Lee asked Mr. Wallberg the same question as above and Mr. Wallberg responded I don't think they would think about E&O, I certainly think its the obligation of anybody in any transaction to reseach all facets whether its John Q. Citizen or an attorney. Senator Lee, Mr. Walberb what is your SD E& O cost you? Mr. Walberb, our last payment was \$82 and going up to \$90 some on the next going around.

Mr. Earl Allen, NDAR, TPU, Inc testified against SB 2078. He is concerned with error and omissions insurance driving up the costs for realtors. Senator Mathern , Mr. Allen are you a member of Realtors Association? Mr. Allen, I am. I've belonged to the National Association of Realtors longer than anybody in the state of North Dakota, anybody in this room by 10 or 20 years. I became a realtor when Claus was still in Germany. I hope you gathered by now that I hope you vote against this bill. Senator Cook, I was beginning to feel that hint from you sir. Patrick Ward, Lobbyist with the North Dakota Association of Independent Insurers, and the North Dakota Domestic Insurance Company. I urge a little bit of caution if there is some inclination to pass a bill like this. I think the Real Estate Commission may be moving in the area of regulating insurance with part of the way the bill is drafted specifically on lines 13 and 14, "with no right on part of the insurer to cancel coverage provided by the licencee". An example was shared, with Mr. Ward stating there has to be two sides to each cancellation situation. If

there is some desire to pass some kind of bill in this area it should be taken into some consideration that the Insurance Commissioner regulate the business of insurance in this state and not the Real Estate Commission number one, and number two, that there may be people who for the same reasons that some realtors don't want people to be without insurance, there may be some people some insurance companies do not want to rate, with E& O insurance, because of continuing problems or something. There might be a need for some coordination between the insurance department and the real estate commission if those types of people need to be regulated. For this statute to be written this way, not allowing cancellation, would cause a lot more litigation, than anything you've seen up to now.

Senator Lee, Mr. Ward, just to clarify for me in a case of group health insurance for example the Chamber of Commerce at home. The group health insurance policy that is offered through the Chamber of Commerce to business members who wish to participate in that group. If I understand that one correctly, and I'm not an insurance expert, I think that's part of the deal that you can't eliminate certain people, you can't cancel an individual because of claim and that's the whole concept of the group. Perhaps you could explain to me, if I misunderstand that and how that would differ from this kind of group in which the benefit is the pool in which there is a premium for everybody would go up if there is an extraordinary amount of claims for a bunch of people, but if there is a pool of very few people who are requiring claims to be paid, I'm talking about the health insurance now, then the premiums end up being less, could you clarify for me why this might be different, why, this if different or is it any different from health insurance.

Patrick Ward in response to Senator Lees' question. I believe that your right, but in those types of cases, those actuarial statistics are taken into consideration in writing those premiums, those policies. The way this bill is written in the mandatory way with the cap on the coverage, I'm not

sure how it would work. The only thing is I am urging this to be done carefully, and be not done to quickly as there needs to be some coordination between both real estate and the insurance industry, and the legislature. I am just urging caution, just not to do it, but to look at it carefully before it is done.

Susan Anderson, legal council for the North Dakota Insurance Department. The department is not taking an official position on this bill, so therefore I am testifying neutrally, but I can perhaps answer some questions, particularly, concerning Senator Lee's question on group health insurance. Health insurance is governed by a different set of rules. It is very specific because of certain serveral mandates, or what not, specifically HIPHA, that in group coverage, certain people can't be cancelled or it will effect premium. E & O would not be governed by those rules, and I guess I like to piggy back on what Mr. Ward said. I did have some concerns over the language in this bill about insurers not being able to cancel. It does seem a bit unconsciounable to me, therefore unfair, that an insurerer cannot cancel somebody, or example for a non-payment of premium or should there be a risk change. I am not familiar with the other states that have adopted this mandatory program, perhaps they have similar language that has worked. I guess I do caution you on this language, particularly because what I think could happen is number one you could have insureres that are not going to give you any bids. If there is no write to cancel, they simply will not write this, secondly, if you have insurers who do want to bid on this and rate this, I think what you may see is that market drying up. Insureres would say if you're going to put these rules in here, we're not going to write it for a short period of time and their claims will go up and then go out of the market. Then you won't have insureres offering this coverage in the state of North Dakota. Ms. Anderson has some concerns on the language on the first page, that

the insurer has the right to cancel, but I guess this would be right to say this seems like sound public policy to put E& O in place for any professional and not only the real estate market.

Senator Watne, Do you know anything about 2148 eliminating E& O for the insurance agents and what is the purpose behind it? Susan Anderson, The purpose behind it, that is our agent producer bill and what occurred in November 1999 was the passage of the Graham Leach Biley Act which is federal legislation which now merges insurance companies allowing to get into banks, and banks get into insurance and securities all blended in there. Out of that legislation,, there was a particular provision that said that states have to provide reciprocity uniformity for the licencing for the insurance agents and brokers, and as a result states had to get all their ducks in a row. What I mean by that, is a state could not impose any greater requirements on a non resident certificance brokers than that state requires, and many states do not require brokers to have E & O coverage, and so, insurance agents are not required to have E&O insurance, brokers are reequred to have E&O, that is what is coming out of the bill, and thats simply because of federal legislation requiring uniformity and reciprocity throughout the states. Senator Watne, So that statement was incorrect? Susan Anderson, yes, Senator Watne, thank you so much.

Senator Cook closed the hearing on SB 2078.

January 12, 2001 Hearing opened on SB 2078 (Tape1 Side B 26.4-52.6)

Senator Cook There is a minimum rate of \$125 a year max on the insurance, what is the deductible. Senator Lee referred to Mr. Lempke knowing the particular details concerning rate, however, Senator Lee shared statistics from her real estate firm in Fargo on the cost of insurance for her firm and their employees. See attached handout. (Meter #27.7)

Senator Watne, referred to pgl of the bill, line 17-20, the real estate commission will determine the terms and conditions of the areas industries coverage (Meter#28.5) required by this chapter,

1-11-01

including the minimum limits of coverage, the permissible deductible and the permissible exceptions. The higher the deductible the lower the premium will be. Deductibles have yet to be determined. Senator Cook Asked questions related to deductibles in SD, Senator Watne referred Senator Cook to the chart passed out to the committee as well as in Mandan, and does this cover agents and brokers in the firm. Senator Watne, both. Senator Mathern, stated that in her firm she has umbrella coverage in her firm to cover all of her staff. However, she does not support Mandates, the thing I have a problem with this thing is telling people they have to carry it as well as telling the insurance company they have to carry it. Cancellation issue is understandable, as it is in any business. For those reasons it does not have my support. Senator Lee, (Meter #33.3) Believes that E&O insurance is a consumer protection issue, to cover personal assets. Senator Lee, however, struggles with the mandate to carry E&O insurance, as Senator Mathern does, but in this case I didn't see it as an individual who is affected by the mandate so much, but rather the consumer as a whole within the whole idea of a mandate. Senator Lyson (Meter #37.1) is in support bill, because it is a win, win situation, for both the brokers and the public, a safety net. Senator Polovitz (Meter #39.0) When any piece of property is solicited, can any realtor have access to this property can sell it? Would they have to not be members of the association or have errors and omission insurance? Senator Lee (Meter #39.8) May I explain what the process might be. Senator Polovitz, (Meter #39.9) Before you do, I have been very pro for errors and omissions. What I am trying to do is see the protection of the consumer on this thing. When a mistake is made and the listing is with an association, who has responsibility at this point? Senator Lee (Meter #41.1) Lengthy explanation of who is responsible for a mistake on a seller/buyer/real estate transaction. Basically the real estate listing agency and the real estate agent are liable for damages to the homeowner, as well as the home inspector. Senator Polovitz then asked about a

